

Utah Department of Health  
**Bureau of Child Care Licensing**

**Request for Clarification Regarding License Exempt Child Care Providers**

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Under Utah Code, Title 29, Chapter 36, Section 106, Subsection (6) the following types of child care are exempt from licensure.

**(6) Care provided as part of a course of study at or a program administered by an educational institution that is regulated by the boards of education of this state, a private education institution that provides education in lieu of that provided by the public education system, or by a parochial education institution.**

In the following three situations, the Bureau is unclear as to whether or how this subsection of the statute applies.

1. Some private elementary schools also offer full day child care for children younger than school age. For example, some Montessori and Challenger schools accept children as young as 1 or 2 years of age for full day care. Programs for these younger children are not education in lieu of that provided by the public schools, because the public schools begin at kindergarten. Is this full day care for children younger than school age meant to be exempt from licensure?

If this care *is* meant to be exempt from licensure, this raises a question about some private child care centers. Kindergarten is not compulsory public education in Utah, and many private child care centers offer a kindergarten program. They do not offer education for children in 1<sup>st</sup> grade or higher, only kindergarten. Because this kindergarten service is education in lieu of that provided by the public schools, does this mean the whole child care center is exempt from licensure, including their full day care for children ranging from infants through 4 years of age?

2. Many elementary schools offer after school child care programs. It seems clear to us from the statute that if the school itself operates the program, and the after school program staff are school employees, then the program is exempt from licensure under this subsection.

Our question arises when there is an after school child care program being held in a public school, but the school is not staffing and operating the program. In other words, the school is letting an outside entity, such as the YMCA, a Boys & Girls Club, or a private provider, use space in the school to conduct an after school child care program. In this case the program is staffed and operated by the outside entity. Is this kind of program meant to be exempt from licensure under this subsection of the statute?

3. Many colleges and universities have full day child care programs on their campuses that function as lab schools for college students in child development courses. Colleges and universities are not regulated by the boards of education of the state, but there are private colleges and universities that provide education in lieu of that provided by public colleges and universities. Are private and/or public college and university child care programs intended to be exempt from licensure under this subsection?

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## **Categories of Child Care Licensing**

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The Bureau of Child Care Licensing regulates two general types of child care providers: child care centers, and in-home child care businesses. The administrative rules regulating these child care providers are intended to ensure a basic level of health and safety for the children in care.

### **CHILD CARE CENTERS**

#### **1. Regular Child Care Centers.**

This category includes child care programs that meet **all** of the following criteria, and are not classified as exempt from licensure under Utah Code, Title 29, Chapter 36, Section 106.

- they provide care in lieu of care ordinarily provided by a parent, for four or more hours per day;
- they provide care in a place other than the provider's home or the child's home;
- they provide care for five or more children;
- the program has a regularly scheduled, ongoing enrollment; and
- they provide care for direct or indirect compensation.

#### **2. Hourly Child Care Centers.**

This category includes child care provided on an hourly basis, usually as part of a business, such as commercial gyms that offer child care while parents work out. Child care programs are required to be licensed as hourly centers if they meet **all** of the following criteria, and are not classified as exempt from licensure under Utah Code, Title 29, Chapter 36, Section 106.

- they provide child care not in a personal residence;
- they provide care for five or more children, but not on a regular schedule; and
- they receive direct or indirect compensation.

After school and summer child care programs for children ages kindergarten through grade 6 are currently licensed as hourly child care programs, or as regular child care centers. However, many of the rules for regular centers and hourly centers do not apply to school age only child care programs. For this reason, the Bureau has been asked by providers to create a rule category that applies specifically to school age only child care programs. The Bureau is in the process of doing this, and a first draft of these rules was discussed at our September Advisory Committee meeting.

### **IN-HOME CHILD CARE BUSINESSES**

In-home child care businesses are regulated as one of the following:

- 1. Licensed Family Child Care, or**
- 2. Residential Certificate Child Care**

Persons offering child care in their home are required to have **either** a *child care license* **or** a *residential certificate*, if they meet all of the following criteria:

- they provide care in lieu of care ordinarily provided by a parent;
- they provide child care for five or more unrelated children;
- they provide care for four or more hours per day;
- they have a regularly scheduled, ongoing enrollment; and
- they provide care for direct or indirect compensation.

The person offering the in-home care can choose whether they wish to have a *license* or a *certificate*. A certificate is a category of regulation created by the legislature, and is intended to allow for lesser regulation than a license.

A license or certificate is **not** required for any of the following kinds of in-home care, whether the care is paid or unpaid:

- A person who cares for related children only.
- A person who cares for 4 or fewer unrelated children in their home.
- A person who cares for children for less than 4 hours per day. (For example, a preschool program that operates for 3 hours a day.)
- A person who provides care on a sporadic basis only. (For example, an occasional babysitter.)
- Nannies who provide care in the child's home.

## **LICENSE EXEMPT CHILD CARE**

Under Utah Code, Title 29, Chapter 36, Section 106 the following types of child care are exempt from licensure.

- (1) Care provided by a facility or program owned or operated by an agency of the United States government.
- (2) Group counseling provided by a mental health therapist, as defined in Section 58-60-102, who is licensed to practice in this state.
- (3) A health care facility licensed pursuant to Title 26, Chapter 21, Health Care Facility Licensure and Inspection Act.
- (4) Care provided to children by or in the homes of parents, legal guardians, grandparents, brothers, sisters, uncles, or aunts.
- (5) Care provided to children, in the home of the provider, for less than four hours a day or on a sporadic basis, unless that child care directly affects or is related to a business licensed in this state.
- (6) Care provided as part of a course of study at or a program administered by an educational institution that is regulated by the boards of education of this state, a private education institution that provides education in lieu of that provided by the public education system, or by a parochial education institution.

Regarding the last category of exempt care, care provided at various educational institutions as outlined in subsection (6), the Department of Health is seeking clarification from the Legislature regarding the specific kinds of care this subsection is meant to exempt from licensure.